

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1537**  
**91ST GENERAL ASSEMBLY**

2451S.02T

2002

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**AN ACT**

To repeal sections 214.330 and 473.097, RSMo, relating to estates and trusts, and to enact in lieu thereof three new sections relating to the same subject.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 214.330 and 473.097, RSMo, are repealed and three new sections  
2 enacted in lieu thereof, to be known as sections 214.330, 362.011 and 473.097, to read as  
3 follows:

214.330. 1. The endowed care fund required by sections 214.270 to 214.410 shall be  
2 permanently set aside in trust or in accordance with the provisions of subsection 2 of this  
3 section. The trustee of the endowed care trust shall be a state- or federally chartered financial  
4 institution authorized to exercise trust powers in Missouri and located in this state. The income  
5 from the endowed care fund shall be distributed to the cemetery operator at least annually or in  
6 other convenient installments. The cemetery operator shall have the duty and responsibility to  
7 apply the income to provide care and maintenance only for that part of the cemetery in which  
8 burial space shall have been sold and with respect to which sales the endowed care fund shall  
9 have been established and not for any other purpose. The principal of such funds shall be kept  
10 intact and appropriately invested by the trustee, **or the independent investment advisor. An**  
11 **endowed care trust agreement may provide that when the principal in an endowed care**  
12 **trust exceeds two hundred fifty thousand dollars, investment decisions regarding the**  
13 **principal and undistributed income may be made by a federally registered or Missouri**  
14 **registered independent qualified investment advisor designated by the cemetery owner,**  
15 **relieving the trustee of all liability regarding investment decisions made by such qualified**

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

16 **investment advisor.** It shall be the duty of the trustee, **or the investment advisor**, in the  
17 investment of such funds to exercise the diligence and care men of ordinary prudence,  
18 intelligence and discretion would employ, but with a view to permanency of investment  
19 considering probable safety of capital investment, income produced and appreciation of capital  
20 investment. The trustee's duties shall be the maintenance of records and the accounting for and  
21 investment of moneys deposited by the operator to the endowed care fund. For the purposes of  
22 sections 214.270 to 214.410, the trustee **or investment advisor** shall not be deemed to be  
23 responsible for the care, the maintenance, or the operation of the cemetery, or for any other  
24 matter relating to the cemetery, including, but not limited to, compliance with environmental  
25 laws and regulations. With respect to cemetery property maintained by cemetery care funds, the  
26 cemetery operator shall be responsible for the performance of the care and maintenance of the  
27 cemetery property owned by the cemetery operator and for the opening and closing of all graves,  
28 crypts, or niches for human remains in any cemetery property owned by the cemetery operator.

29       2. If the endowed care cemetery fund is not permanently set aside in a trust fund as  
30 required by subsection 1 of this section then the funds shall be permanently set aside in a  
31 segregated bank account which requires the signature of the cemetery owner and either the  
32 administrator of the office of endowed care cemeteries, or the signature of a licensed practicing  
33 attorney with escrow powers in this state as joint signatories for any distribution from the trust  
34 fund. No funds shall be expended without the signature of either the administrator of the office  
35 of endowed care cemeteries, or a licensed practicing attorney with escrow powers in this  
36 state. The account shall be insured by the Federal Deposit Insurance Corporation or comparable  
37 deposit insurance and held in the state- or federally chartered financial institution authorized to  
38 do business in Missouri and located in this state. The income from the endowed care fund shall  
39 be distributed to the cemetery operator at least in annual or semiannual installments. The  
40 cemetery operator shall have the duty and responsibility to apply the income to provide care and  
41 maintenance only for that part of the cemetery in which burial space shall have been sold and  
42 with respect to which sales the endowed care fund shall have been established and not for any  
43 other purpose. The principal of such funds shall be kept intact and appropriately invested by the  
44 cemetery operator with written approval of either the administrator of the office endowed care  
45 cemeteries or a licensed practicing attorney with escrow powers in this state. It shall be the duty  
46 of the cemetery owner in the investment of such funds to exercise the diligence and care a person  
47 of reasonable prudence, intelligence and discretion would employ, but with a view to  
48 permanency of investment considering probable safety of capital investment, income produced  
49 and appreciation of capital investment. The cemetery owner's duties shall be the maintenance  
50 of records and the accounting for an investment of moneys deposited by the operator to the  
51 endowed care fund. For purposes of sections 214.270 to 214.410, the administrator of the office

52 of endowed care cemeteries or the licensed practicing attorney with escrow powers in this state  
53 shall not be deemed to be responsible for the care, maintenance, or operation of the  
54 cemetery. With respect to cemetery property maintained by cemetery care funds, the cemetery  
55 operator shall be responsible for the performance of the care and maintenance of the cemetery  
56 property owned by the cemetery operator and for the opening and closing of all graves, crypts,  
57 or niches for human remains in any cemetery property owned by the cemetery operator.

58 3. The cemetery operator shall be accountable to the owners of burial space in the  
59 cemetery for compliance with sections 214.270 to 214.410.

60 4. All endowed care funds shall be administered in accordance with an endowed care  
61 fund agreement. The endowed care fund agreement shall be subject to review and approval by  
62 the office of endowed care cemeteries or by a licensed practicing attorney with escrow powers  
63 in this state. The endowed care cemetery shall be notified in writing by the office of endowed  
64 care cemeteries or by a licensed practicing attorney with escrow powers in this state regarding  
65 the approval or disapproval of the endowed care fund agreement and regarding any changes  
66 required to be made for compliance with this chapter and the rules and regulations promulgated  
67 thereunder. A copy of the proposed endowed care fund agreement shall be submitted to the  
68 office of endowed care cemeteries. The office of endowed care cemeteries or a licensed  
69 practicing attorney with escrow powers in this state shall notify the endowed care cemetery in  
70 writing of approval and of any required change. Any amendment or change to the endowed care  
71 fund agreement shall be submitted to the office of endowed care cemeteries or to a licensed  
72 practicing attorney with escrow powers in this state for review and approval. Said amendment  
73 or change shall not be effective until approved by the office of endowed care cemeteries or by  
74 a licensed practicing attorney with escrow powers in this state. All endowed care cemeteries  
75 shall be under a continuing duty to file with the office of endowed care cemeteries or with a  
76 licensed practicing attorney with escrow powers in this state and to submit for approval any and  
77 all changes, amendment, or revisions of the endowed care fund agreement.

**362.011. 1. For the purposes of this chapter, a person does not engage in the trust  
2 business by:**

3 **(1) The rendering of fiduciary services by an attorney-at-law admitted to the**  
4 **practice of law in this state;**

5 **(2) Rendering services as a certified or registered public accountant in the**  
6 **performance of duties as such;**

7 **(3) Acting as a trustee or receiver in bankruptcy;**

8 **(4) Engaging in the business of an escrow agent;**

9 **(5) Receiving rents and proceeds of sale as a licensed real estate broker on behalf**  
10 **of the principal;**

11           **(6) Acting as trustee under a deed of trust made only as security for the payment**  
12 **of money or for the performance of another act;**

13           **(7) Acting in accordance with its authorized powers as a religious, charitable,**  
14 **educational, or other not-for-profit corporation or as a charitable trust or as an**  
15 **unincorporated religious organization;**

16           **(8) Engaging in securities transactions as a dealer or salesman;**

17           **(9) Acting as either a receiver under the supervision of a court or as an assignee for**  
18 **the benefit of creditors under the supervision of a court; or**

19           **(10) Engaging in such other activities that the director may prescribe by rule.**

20           **2. Persons consigned to be not engaged in the trust business pursuant to subsection**  
21 **1 of this section shall not use the words "trust company" as part of any artificial or**  
22 **corporate name or title nor shall such persons engage in any other conduct that violates**  
23 **section 362.425.**

          473.097. 1. Distributees of an estate which consists of personal property or real property  
2 or both personal and real property have a defeasible right to the personal property, and are  
3 entitled to the real property of such estate, as provided in this section, without awaiting the  
4 granting of letters testamentary or of administration, if all of the following conditions are met:

5           (1) The value of the entire estate, less liens, **debt**, and encumbrances, does not exceed  
6 forty thousand dollars;

7           (2) Thirty days have elapsed since the death of the decedent and no application for letters  
8 or for administration or for refusal of letters under section 473.090 is pending or has been  
9 granted, or if such refusal has been granted and subsequently revoked;

10           (3) A bond, in an amount not less than the value of the personal property, approved by  
11 the judge or clerk of the probate division is filed by the person making the [herein] required  
12 affidavit conditioned upon the payment of the debts of the decedent, including any debts to the  
13 state of Missouri, the expenses of funeral and burial and compliance with future orders of the  
14 court in relation to the estate of the decedent; and further conditioned that any part of the  
15 property to which the distributee is not entitled will be delivered to the persons entitled to the  
16 property under the law. Liability of the sureties on the bonds provided for in this section  
17 terminates unless proceedings against them are instituted within two years after the bond is filed;  
18 except that, the court may dispense with the filing of a bond if it finds that the same is not  
19 necessary;

20           (4) A fee, in the amount prescribed in [subdivision (4) of] subsection 1 of section  
21 483.580, RSMo, and when required, the publication cost of the notice to creditors are paid or the  
22 proof of payment for such publication is provided to the clerk of the probate [court] **division**.

23           2. Notwithstanding the limitation periods set out in section 473.050, the affidavit

24 required by this section may be made by the person designated as personal representative under  
25 the will of the decedent, if a will has been presented for probate within the limitation periods  
26 specified in section 473.050, otherwise by any distributee entitled to receive property of the  
27 decedent any time after thirty days after decedent's death, and shall set forth all of the following:

28 (1) That the decedent left no will or, if the decedent left a will, that the will was  
29 presented for probate within the limitation periods specified in section 473.050;

30 (2) That all unpaid debts, claims or demands against the decedent or the decedent's estate  
31 and all estate taxes due, if any, on the property transfers involved have been or will be paid,  
32 except that any liability by the affiant for the payment of unpaid claims or demands shall be  
33 limited to the value of the property received;

34 (3) An itemized description and valuation of property of the decedent. As used in this  
35 subdivision, the phrase "property of the decedent" shall not include property which was held by  
36 the decedent as a tenant by the entirety or a joint tenant at the time of the decedent's death;

37 (4) The names and addresses of persons having possession of the property;

38 (5) The names, addresses and relationship to the decedent of the persons entitled to and  
39 who will receive, the specific items of property remaining after payment of claims and debts of  
40 the decedent, included in the affidavit;

41 (6) The facts establishing the right to such specific items of property as prescribed by  
42 this section.

43 The certificate of the clerk shall be annexed to or endorsed on the affidavit and shall show the  
44 names and addresses of the persons entitled to the described property under the facts stated in  
45 the affidavit and shall recite that the will of decedent has been probated or that no will has been  
46 presented to the court and that all estate taxes on the property, if any are due, have been paid.

47 3. A copy of the affidavit and certificate shall be filed in the office of the clerk of the  
48 probate division and copies of the affidavit and certificate shall be furnished by the clerk.

49 4. The distributees mentioned in this section may establish their right to succeed to the  
50 real estate of the decedent by filing a copy of the foregoing affidavit and certificate of the clerk  
51 in the office of the recorder of deeds of each county where the real property is situated.

52 5. When the value of the property listed in the affidavit is more than fifteen thousand  
53 dollars, the clerk shall cause to be published in a newspaper of general circulation within the  
54 county which qualifies under chapter 493, RSMo, a notice to creditors of the decedent to file  
55 their claims in the court or be forever barred. The notice shall be published once a week for two  
56 consecutive weeks. Proof of publication of notice pursuant to this section shall be filed not later  
57 than ten days after completion of the publication. The notice shall be in substantially the  
58 following form:

59 To all persons interested in the estate of ....., Decedent:

60           On the ..... day of ....., [19...] 20..., a small estate affidavit was filed by  
61 the distributees for the decedent under section 473.097, RSMo, with the probate division of the  
62 circuit court of ..... County, Missouri.

63           All creditors of the decedent, who died on ....., [19...] 20..., are notified that  
64 section 473.444 sets a limitation period that would bar claims one year after the death of the  
65 decedent. A creditor may request that this estate be opened for administration.

66           Receipt of this notice should not be construed by the recipient to indicate that the  
67 recipient may possibly have a beneficial interest in the estate. The nature and extent of any  
68 person's interest, if any, may possibly be determined from the affidavit on this estate filed in the  
69 probate division of the circuit court of ..... County, Missouri.

70           Date of first publication is ....., [19....] 20...

71 .....  
72 Clerk of the Probate Division  
73 of the Circuit Court  
74 ..... County, Missouri

75           6. Upon compliance with the procedure required by this section, the personal property  
76 and real estate involved shall not thereafter be taken in execution for any debts or claims against  
77 the decedent, but such compliance has the same effect in establishing the right of distributees to  
78 succeed to the property as if complete administration was had; but nothing in this section affects  
79 the right of secured creditors with respect to such property.

80           7. The affiant shall collect the property of decedent described in the affidavit. The  
81 property of decedent shall be liquidated by the affiant to the extent necessary to pay debts of  
82 decedent. If the decedent's property is not sufficient to pay such debts, abatement of the shares  
83 of the distributees shall occur in accordance with section 473.620. The affiant shall distribute  
84 the remaining property to such persons identified in the affidavit as required in subdivision (5)  
85 of subsection 2 of this section who are entitled to receive the specific items of personal property,  
86 as described in the affidavit, or to have any evidence of such property transferred to such persons.  
87 To the extent necessary to facilitate distribution, the affiant may liquidate all or part of decedent's  
88 property.